

HOUSE No. 122

By Mr. Cabral of New Bedford, petition of Emile J. Goguen for legislation to reform the election recount law with a particular emphasis on the standards for judicial review. Election Laws.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT TO REFORM THE ELECTION RECOUNT LAW.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Notwithstanding any general or special law to the
2 contrary, whenever any person who is a candidate for a state,
3 county or local elected office, or a candidate for a senator or rep-
4 resentative in the United States Congress, and who, after a recount
5 in ballots in the election, contests the results or declaration of the
6 election as determined by said recount to the count, said appeal to
7 the court shall be conducted in the following manner.

1 SECTION 2. Section 135 of Chapter 54, Line 213, as appearing
2 in the 2002 Official Edition, after the word “court” is hereby
3 amending by inserting the following:— Once a recount is trig-
4 gered by applicable sections of the Massachusetts General Laws,
5 the State Police shall take physical control of all ballots and
6 related materials involved in the recount as soon as possible. The
7 State Police shall maintain exclusive control over the ballots and
8 other materials pending and during the recount except when the
9 recount complaint is being heard in open court for trial and adju-
10 dication.

1 SECTION 3. The Presiding Justice upon receipt of the ballots
2 and other materials shall use the contested ballots and other mate-
3 rials to be opened and unsealed only in open court and in the pres-
4 ence of candidates for the office for which the recount is being
5 held, or their representatives.

1 SECTION 4. Section 59 of Chapter 56, Line 4, as appearing in
2 the 2002 Official Edition, after the word “mandamus” is hereby
3 amended by inserting in place the following:— The proceedings
4 under this section shall be conducted in accordance with the
5 Massachusetts Rules of Civil Procedure, except that these pro-
6 ceedings before the superior court shall be heard by a panel of
7 three, (3) Superior Court Judges who will be appointed by the
8 chief administrative judge of the superior court system. An appeal
9 can be taken from Superior Court to the Appeals Court within
10 five, (5) days of the superior court decision. The Appeals Court
11 shall give priority to hear and decide the appeals brought to them
12 from Superior Court. Aggrieved candidates can further appeal to
13 the Supreme Judicial Court but not further. Before the Supreme
14 Judicial Court, such appeals on all questions, whether they be on
15 fact or law, shall be open to the same extent as they were before
16 the judicial panel in superior court. Following the judicial review,
17 and after a determination is made in the court on the recount in
18 question, the justices shall publicly announce that determination
19 in open court.